HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII, Rule 32 (2) (b)

Description of the Case.

Criminal Appeal No 575 of 2001
(Old No. 2301/1987)

Johar Singh & another ….Appellants

Versus

State …Respondent

Approved for reporting.

Not approved for reporting.

Date of Decision 25th November, 2004

Initial of Judge.

IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

Reserved

Criminal Appeal No. 575 of 2001
(Old No. 2301/1987)

Johar Singh & another ……Appellants

Versus

State ….Respondent

Sri Gopal Swaroop Chaturvedi, learned counsel for the appellant
Sri A. Rab, learned A.G.A. for the State

Coram : **Hon'ble P.C. Verma, J.**
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble B.C. Kandpal, J.)

This criminal appeal arises out against the judgment and order dated 01.09.1987 passed by Sessions Judge, Almora in S.T. No. 33 of 1986 State Vs. Johar Singh & another convicting the accused/appellants under Sections 302/34, 307/34 and 379 I.P.C. and sentencing them to life imprisonment under Section 302/34, 7 (Seven) years rigorous imprisonment under Section 307/34 I.P.C. and further 1 year rigorous imprisonment under Section 379 I.P.C.

Brief facts of the prosecution case are that one Dhan Singh father of the complainant Ratan Singh R/o Village Udalgaon was going to Bageshwar on 08.04.1985 with Guman Singh and complainant was also accompanying them. At about 8:00a.m. when they reached near Riyunikhet, they stated waiting for the bus at the tea stall of Bahadur Singh and started taking tea. After some time, Gusain Singh, Dan Singh and Balram Singh also reached over there. At about 8:30 A.M. a car came from the side of the Bageshwar, which was being driven by an unknown person. The

Car stopped in front of tea stall and it could reveal that the accused/appellant Johar Singh and his companion Sunder Singh Were sitting at the back seat of the car. The accused/appellant Johar Singh is the cousin of complainant Ratan Singh, as grandfather of both the persons were real brothers. A barreled weapon came out from the window of the car and firing started. The first shot hit Balram and the second shot was fired at Guman Singh. All the persons sitting at the tea stall started running in order to save their life. The complainant also ran towards Bageshwar. Guman Singh crawled towards Gomti river which lies towards the south of the tea stall. When the complainant had run for about 30-40 yards, he saw that the accused and his associates were chasing his father having firearms with them. He also saw that Guman Singh was also being chased by these persons, but Guman Singh succeeded in crossing the Gomti River and hid himself behind the big boulder. Thereafter, the accused stopped chasing Guman Singh and returned. While returning, they saw Dhan Singh father of the complainant who was hiding himself in a wheat crop field. The accused/appellants Johar Singh and his companion-Sunder Singh started firing at Dhan Singh and after coming near to Dhan Singh, Johar Singh fired another shot from a distance of about 2-3 ft. and thereafter both these assailants after assaulting Dhan Singh with the firearm, came to the tea stall and took away the gun of Guman Singh which was left at the tea stall. Both the assailant entered the car and went towards Bejnath.

After this occurrence was over, the complainant Ratan Singh came to the place where his father was lying dead. The body had

firearm injuries and blood was oozing out. Ratan Singh accompanied by Balram to Bageshwar and lodged the First Information Report at P.S. Bageshwar at about 10:00 a.m.

After the registration of the case, the investigation was entrusted to S.O. Bhagwan Din Verma who immediately reached the scene of the occurrence where the inquest on the dead body of Dhan Singh was performed. After the inquest was over, the body was sent for post-mortem examination. The Investigation Officer performed other formalities like collecting the plain and blood stained earth and preparing the site plan of the place of occurrence. The Investigation officer also recorded the statement of the complainant Ratan Singh. The Investigation officer also reached at the place of occurrence on 09.04.1985 and found some pallets in the pieces of wood, which was taken into custody and the memo was prepared.

The post-mortem examination of the dead body was conducted on 08.04.1985 at 3:30 P.M. by Dr. R.C.S. Sayana, who found following ante mortem injuries on the person of the deceased:-

> *"1. Gun shot wound, 8cm X 6cm X chest cavity deep on the right side of posterior axillary fold with upper posterior part of right arm, (wound of entry). Margins are inverted. Underneath the right ribs 2, 3, 4, 5 were fractured. Right scapula was fractured at multiple places. Right lung was lacerated at multiple places. Left lung and pleura were lacerated at multiple places.*

Heart was lacerated at multiple places. Chest cavity was filled by clotted blood. No blackening and tattooing was around the wound 28 (Twenty eight) small metallic pellets were found in chest cavity.

Including tissue, heart and anterior wall of chest. 4 (four) large metallic pellets were found in chest cavity and anterior chest wall.

2. Multiple gun shot wounds (wound of entry) 1 X 1 X cavity deep on the back of right shoulder and upper part of back of right side chest, in all area of 12cm X 7cm below the clavicular spacular joint. Margins were inverted. No blackening o r tattooing was present.

3. Gun shot wound 1.5 X 2.5cm X skull cavity deep (wound of entry) on the back of head. Near ape of neck, 5cm away from the right ear. Margins were inverted. Blackening and tattooing were present. Underneath the wound, the occipital bone was fractured. Left temporal and frontal bone were fractured at multiples places. Brain tissue was completely lacerated. 4(four) large metallic pellets and two pieces of wads were found in the brain tissue.

4. Lacerated wound 3 X 1cm X bone deep on the back of head, 3cm above the nape of neck.

5. Lacerated wound 2 cm X 1cm X bone deep on the back of head, 1.5 cm left from injury No. 4.

6. Lacerated wound 1.5 cm X 1cm X bone deep on the inner margin of left side eye brow.

The cause of death, as mentioned in the post mortem report, is shock and haemorrhage, as a result of gun shot wound."

The car in which the assailants came at the spot and committed the murder of Dhan Singh was recovered from Someshwar and this car was subsequently identified by the eyewitnesses. The Investigation Officer recorded the statement of the eyewitnesses and thereafter made search for the assailants.

As the assailants could not be traced out, therefore, report for proceedings, under Section 82/83 Cr. P.C. was submitted in the

court. However, accused Johar Singh surrendered himself in the court of C.J.M., Almora on 07.5.1985 and another accused was arrested at Haldwani on 11.06.1985

The injured Balram was medically examined by Dr. S.C. Joshi on 08.04.1985 at 11:00a.m. and he found following injuries on the person injured:-

> *"1. Lacerated wound 1cm X 0.7cm X muscle deep placed on back of shest right side. 5cm below the lower angle of scapula (right). Margins inverted. No blackening or charring*
>
> *2. Lacerated wound 1cm X 0.7 cm X muscle deep on the place 1 cm below injury on. 1. Margins were inverted. No blackening or charring.*
>
> *3. Lacerated wouned 1.5 cm X 1 cm X muscle deep on the lower part of back of chest on right side, 5cm lateral to mid line oval in shape. Transversely placed. Margins everted. No blackening or charring.*
>
> *4. Lacerated wound 2.5 X 1cm X muscle deep placed 1cm below the injury no. 3. Margins everted and abraided wound, oval in shape and transversely placed. No blackening or charring.*
>
> *Injury Nos. 1 and 2 were exactly parallel to injury nos. 3 and 4 placed 5cm apart and there was swalling in 6cm X 8 cm around the above injuries. All the injuries were kept under observation and were found to be fresh and caused by some fire arm."*

The Investigating Officer after completing the investigation submitted the chargesheet against the accused/appellant Johar Singh along with his other companion Sunder Singh.

After submission of the chargesheet the accused were committed to the court of Sessions and the learned Sessions Judge framed the charges against the accused under Sections 302/34, 307/34 and 379 I.P.C.

The accused/appellants denied of the charges leveled against them and claimed their trial.

The prosecution in order to bring the guilt of the accused persons to home, produced Rattan Singh (P.W.1) – informant/eyewitness, Dr. S.C. Joshi (P.W.2). Dr. R.C.S. Sayana (P.W.3). Gusain Singh (P.W.4) – eyewitness, Balram Singh (P.W.5) - injured eyewitness. Guman Singh (P.W.6) – eyewitness, Kishan Ram (P.W. 7)- constable, D.P. Singh (P.W. 8) – Inspector and Bhavwan Din Verma (P.W.9) – Investigation Officer.

After the evidence of the prosecution was over, the statements of the accused/ appellants were recorded under Section 313 Cr.P.C. The appellants did not adduce any evidence in their defence.

Learned Sessions Judge, after having perused the entire evidence on record and hearing the learned counsel for the parties, convicted the accused/appellants under Section 302/34, 307/34 I.P.C. as well as under Section 379 I.P.C. 201/34 and sentenced them to life imprisonment under Section 302/34, 7 years rigorous imprisonment under section 307/34 I.P.C. and further 1 year rigorous imprisonment under Section 379 I.P.C. vide judgment and order dated 01.09.1987.

Feeling aggrieved by the aforesaid impugned judgment and order the accused/appellants Johar Singh with his companion Sunder Singh preferred appeal before the Hon'ble Allahabad High Court, which has been transferred to this Court, for disposal, after creation of Uttaranchal State.

It is pertinent to mention here that one of the accused/appellant - Sunder Singh died during the pendencey of the appeal. Therefore, the appeal on behalf of the appellant - Sunder Singh is abated but the same continues against another appellant, namely, Johar Singh.

We have heard learned counsel for the parties and perused the record.

The record shows that the First Information report, which has been lodged by P.W. 1 Ratan Singh, is without any delay. The time of the occurrence as per the prosecution, is 08.04.1985 at 8:45 A.M. The distance of the Police Station from the place of occurrence is about 8 K.Ms. The First Information report has been lodged at P.S. Bageshwar on 08.04.1985 at 10:00 A.M. by Ratan Singh. Accordingly to P.W. 1 Ratan Singh, the occurrence in which his father Dhan Singh sustained injuries and subsequently died, took place at about 8:45 A.M. on 08.04.1985. As per the deposition of Ratan Singh he, after the occurrence went near the place where his father was assaulted and was lying dead. Thereafter, he went to the police Station running on foot, where he prepared the written report exhibit Ka-1 at he Police Station. Thereafter, this report has

been lodged at about 1 and 15 hour after the occurrence. The explanation given by Ratan Singh in his deposition appears to be trustworthy and his much of time taken by complainant Ratan Singh appears to be quite reasonable. It is thus the First Information Report is well within time and there is no delay.

Learned counsel for the appellant has pointed out that the First Information Report was sent to Police Office on 09.4.1985 and no explanation has been given as to why the First Information Report was not dispatched on 08.04.1985 itself.

It is true that no explanation is forthcoming but this fact alone does not discredit the First Information Report and keeping in view the promptness in lodging the First Information Report by Ratan Singh, son of the deceased, it becomes quite clear that the complainant had certainly no opportunity to manufacture a cock-bull story.

The another important aspect of the prosecution case is the motive available to the accused/appellant for accusing assault at Ghuman Singh and murdering Dhan Singh. In view of the deposition of P.W. 6 Ghuman Singh, the appellant Johar Singh is his real nephew. This witness has stated that Johar Singh had been erratic from childhood and in the year 1975, Johar Singh had also committed that and he was asked by Ghuman Singh not to repeat the same. Ghuman Singh has also deposed that he always made efforts to reform Johar Singh but he continued his criminal activities. On account of the same, Johar Singh had always been

Inimical to Ghuman Singh. The deposition of P.W. 6 Ghuman Singh further reveals that Johar Singh came to the house and assaulted. The report was lodged whereby, a case under Section 352/452 I.P.C. was lodged and deceased Dhan Singh was nominated s eyewitness in that report. A question has been put in the cross examination of P.W. 6 Ghuman Singh that all the aforesaid criminal cases against Johar Singh, were ended in acquittal but to our view, the acquittal of appellant Johar Singh in criminal cases would not lead to the conclusion that appellant Johar Singh was not inimical to Ghuman Singh and the deceased Dhan Shing who was shown as an witness in the aforesaid criminal case. Therefore, there was strong motive available to the appellant to assault Ghuman Singh as well as Dhan Singh.

Learned counsel for the appellant has stressed vehemently on this aspect of the matter that inured witness P.W. 5 Balram who was alleged to have suffered injuries during the course of incident, has turned hostile. Therefore, the case now rests upon the sole witness of Ghuman Singh shoes presence at the time of the occurrence could not be satisfactorily established by the prosecution.

We fail to appreciate the argument advanced by the learned counsel for the appellant. As per the assessment of the evidence of the prosecution, it is quite clear that P.W. 1 Ratan Singh has deposed that at the time of the occurrence, his father was sitting at the tea stall of Bahadur Singh and in front of his Balram Was also

Sitting. He has also deposed that Ghuman Singh also present and one Gusain Singh as well as another witness Dan Singh were also sitting there. This witness has further deposed that all of a sudden a car came from the side of Bageshwar driven by an unknown person and the backseat was occupied by the appellant Johar Singh and his associate. The car stopped near Tea Stall and the shots started coming out of the car stopped near Tea Stall and the shots started coming out of the car and during this occurrence. First of all Balram received injuries. The second shot was fired at Ghuman Singh but he could escape. Thereafter, all the persons present at the tea stall started running to save their lives and the complainant himself also ran towards Bagehswar and after going 30 to 40 yards, he looked back and saw that the appellant and his associate were chasing his father who hid himself behind Banana Tree. He also saw that the appellant and his associate were chasing Ghuman Singh who crossed Gomti River and hid himself behind a big boulder. The appellant thereafter came back and found Dhan Singh was hiding there in the wheat field; hence started firing at Dhan Singh. Thereafter the appellant Johar Singh went near Dhan Singh and fired at from a closed distance. The appellant and his associate assaulted Dhan Singh with the Butts and took away the gun of Ghuman Singh which was kept lying at tea stall. This witness has further stated in his deposition that after the incidence, he came near his father and found him lying dead. Thereafter, he went to Police Station in order to lodge First Information Report.

The Learned counsel for the appellant made an effort to suggest that this witness was not present at the place of occurrence. But we do not find anything on the record, which may rule-out the presence of P.W.1 Ratan Singh at the place of occurrence when the same incidence took place. In the First Information Report, this witness has in the very beginning mentioned that he was accompanying his father and Ghman Singh for Bageshwar. Thereafter, it does not appear to be probable that this witness is not any eyewitness.

Again another eyewitness Ghuman Singh P.W.6 has deposed that he was also present at the place of the occurrence. He has deposed that he was sitting at the tea stall where Dhan Singh, Ratan Singh Ghuman Singh and Balaram were also sitting. He has corroborated the version given by the informant in his deposition before the Court by saying that a car came from the side of Bageshwar, which stopped near the tea stall and shot started coming from inside the car. This witness has further deposed that two assailants sitting in the car were Johar Singh and Sunder Singh. He has also deposed that first shot hit Balram and the second shot was fired at him. But he rolled down on the ground and ran towards river Gomti. He has also stated that he was chased by the appellant and his associate but he could succeed in crossing the river and hid himself behind the big stone boulder. He has also deposed that the accused thereafter returned from the bank of the river and went to the wheat field where Dhan Singh was hiding

himself. The appellant and his associate thereafter assaulted and killed Dhan Singh. He has also stated that after killing Dhan Singh, the appellant and his associate left the place by taking his gun. Therefore, the statement of P.W. 6 Ghuman Singh fully supports the manner of occurrence and he has specifically identified the assailants including the appellant.

The Learned counsel for the appellant has further submitted that in case Ghuman Singh was present at the place of the occurrence, then there was no reason as to why the accused persons left him alive who had animus with him. It has also been submitted that it would not be possible for Ghuman Singh to make his escape good at the time of the occurrence.

We failed to appreciate the argument advanced by the learned counsel for the appellant. P.W. 6 Ghuman Singh has clearly stated that he rolled himself and ran towards river Gomti and could save his life by crossing the river and thereafter hiding behind the big boulder. This witness was aged about 52 years only and he is a rural based person, hence it was quite probable that he could away from the place of the occurrence faster in order to save his life by crossing the river Gomti and hiding himself behind the big boulder. The fact alone that he did not receive any injury is not going to establish that he was not present at the scene of the occurrence. We do not find any infirmity in the testimony of this witness and there is no reason to disbelieve or discredit his testimony.

The eyewitnesses as produced by the prosecution have clearly deposed that gun belonging to Ghuman Singh was taken by the appellant and his associate from the spot. P.W. 6 Ghuman Singh had a gun with him at the time of the occurrence, which was kept by him at the tea stall and during the course of the occurrence, he ran away from the place of the occurrence leaving behind his gun at the tea stall which was ultimately carried away by the appellant and his associates after the commission of the crime. This fact again establishes the presence of P.W.6 Ghuman Singh at the time of occurrence.

Further, the manner of the assault as has been alleged by P.W.1 Ratan Singh and P.W. 6 Ghuman Singh is supported by the medical evidence. Inured Balram received inuuries on his back and both of the eyewitness i.e. P.W. 1 Ratan Singh and P.W. 6 Ghuman Singh facing towards tea stall. Naturally, under this position, the injuries could be received by Balram on his back. Further, Dr.R.C. Sayana who has conducted the post-mortem no the body of Dhan Singh has stated that the deceased Dhan Singh had sustained fire arm injuries on his person. He found certain pallets from inside the body of the deceased. The doctor also found blackening and scorching in the injuries suffered by the deceased. Therefore, the medical evidence clearly corroborated the ocular version.

The Learned counsel for the appellant has further submitted that the prosecution has not offered any explanation with regard to

the injuries No.4, 5 and 6 sustained by Dhan Singh. As per the medical evidence, the injuries No.4, 5 and 6 are the lacerated wounds and these injuries could not have been caused during the course of the occurrence, hence the manner in which the incident is alleged to have taken place appears to be doubtful. Again, we find no force in this argument. P.W. 1 has clearly deposed in his deposition before the Court that the appellant Johar Singh after firing at his father Dhan Singh had also assaulted with Butt end of the weapon at his head. P.W. 6 Ghuman Singh has also deposed in his deposition before the Court That Johar Singh Fired at Dhan Singh from a close range and thereafter assaulted at his head with the butt end of the arm. Therefore, the lacerated wound sustained by the deceased have been specifically explained by the eyewitness produced by the prosecution.

The Learned counsel for the appellant has further argued that the complainant has, nowhere mentioned in the First Information Report with regard to the assault at the head of Dhan Singh with the butt end of the fire arm. Therefore, it is a subsequent development and the same creates a doubt with regard to the genesis of the prosecution case.

We do not find any substance in this argument. It is a settled law that the first Information Report is not supposed to be the encyclopedia of the entire case.

The time and place of the occurrence again cannot be doubted in this case. It is true that P.W. 4 Gusain Singh and P.W.5

Balram, an injured witness have turned hostile but these witnesses have corroborated the eyewitness account pertaining to the case of the prosecution regarding the time and place of the occurrence as well as manner of the occurrence. These hostile witnesses have certainly failed to disclose the identity of the assailants and there are sufficient reasons for it. But, however this fact can be safely concluded that Balram sustained injuries at the place of the occurrence and at the time alleged by the prosecution.

P.W. 4 Gusain Singh who has turned hostile has clearly deposed that he as well as Dhan Singh and Ghuman Singh were present at the place of the occurrence. He has also stated therein the manner of the occurrence as has been alleged by the prosecution, although, has not identified the real assailants. Therefore, the presence of Ghuman Singh, eyewitness is established on the basis of the statement of these hostile witnesses. Again, this witness has stated that he has seen son of Dhan Singh who lodged the report. He has stated about his animus with Ghuman Singh and Dhan Singh in his cross-examination and that must be the reason with regard to his hostility.

Further, P.W. 5 Balram has stated in his deposition before the Court that Ghuman Singh and Dhan Singh were present at the tea stall and Ghuman Singh was sitting in front of him. He has also stated that gun belonging to Ghuman Singh was also kept over there. Therefore, this witness has also established the presence of Ghuman Singh at the place of the occurrence as well as

at the alleged time. He has also stated that he moved the application before the lower court as well as in the High Court that he has an apprehension of his life from the appellant Johar Singh and others and he should be provided the security but in the cross-examination before the court during the trial, he has stated that he moved those applications on account of fear from Ghuman Singh and not for the appellants. Therefore, the hostility of this witness appears to be quite clear and simply for this reason, he did not identify the real assailants but one thing has become clear on the basis of this testimony that the presence of Ghuman Singh at the place of occurrence is established beyond reasonable doubt.

In view of the discussions made above, we are of the definite opinion that the impugned judgment and order passed by the trial court convicting the appellant and sentencing thereon does not require any interference by way of this appeal. The appeal being devoid of any merit is liable to be dismissed.

Accordingly, the appeal is dismissed. The conviction and the sentence thereon passed by the Trial Court is hereby confirmed.

A copy of the judgment alongwith the Trial Court record should be sent immediately so that the Chief Judicial Magistrate concerned may take appropriate action in order to take the appellant into custody.

(P.C.Verma, J) **(B.C.Kandpal, J)**

November 25, 2004:
DANG